

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MIC:DET:TL-N-4288-99

ERSkinner

date: **AUG 06 1999**

to: Chief, Examination Division, Michigan District
Attn: Branch 1 Case Manager [REDACTED]

from: District Counsel, Michigan District, Detroit

subject: [REDACTED]
I.R.C. § 6012 Determination - [REDACTED]

This memorandum is in response to your request for advice regarding whether five corporate entities (formed by [REDACTED] ([REDACTED]) to effectuate the spin-off of [REDACTED] from [REDACTED]) may receive a determination from the District Director that they are not required to file federal income tax returns for [REDACTED]. The advice in this memorandum is subject to post-review in the National Office, which we will expedite. If you have any questions, please call the undersigned at (313) 226-2305, voice mail box #245.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

11002

Issue

Whether corporations which were established and organized in [REDACTED] but transacted no business, had no income, assets or employees during [REDACTED], may receive a determination that they are not required to file a [REDACTED] federal income tax return pursuant to Treas Reg. § 1.6012-2(a)(2).

Proposed Conclusion

Since the corporations were established and organized during [REDACTED], they are not eligible for a determination that they are not required to file a [REDACTED] federal income tax return pursuant to Treas Reg. § 1.6012-2(a)(2).

Facts

[REDACTED] ([REDACTED]) formed the following corporations to effectuate the spin-off of [REDACTED] from [REDACTED]:

Name of Corporation	Federal ID #	Date Incorporated
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

On [REDACTED], [REDACTED] requested a determination from the District Director pursuant to Treas. Reg. § 1.6012-2(a)(2) that the above listed corporations were not required to file federal income tax returns for [REDACTED]. [REDACTED] made the following representations regarding the above entities in its determination request:

These corporations were established as the first of many steps taken in order to effect the spin-off of [REDACTED] ([REDACTED]) from [REDACTED]. These entities were organized in the state of Delaware on the various dates listed above.

As of [REDACTED], these corporations had transacted no business and had no income from any source whatsoever. Furthermore, they held no assets in their own name and they did not have any employees of record on [REDACTED]. Effective [REDACTED], [REDACTED] contributed to [REDACTED] the assets and liabilities of [REDACTED]'s automotive components and systems business.

DISCUSSION

Treas. Reg. § 1.1602-2(a)(2) provides in part that:

(2) Existence of corporation. A corporation in existence during any portion of a taxable year is required to make a return. If a corporation was not in existence throughout an annual accounting period (either calendar year or fiscal year), the corporation is required to make a return for that fractional part of a year during which it was in existence. ... [I]f a corporation has received a charter **but has never perfected its organization** and has transacted no business and has no income from any source, it may upon presentation of the facts to the district director be relieved from the necessity of making a return. In the absence of a proper showing of such facts to the district director, a corporation will be required to make a return. (emphasis added).

In the present case, [REDACTED]'s presentation of facts appears to track the language of the regulation in all respects except for the requirement that the corporations have "never perfected its organization". Not only does [REDACTED]'s presentation of facts fail to include this representation, the facts provided indicate the corporations at issue "were organized in the state of Delaware on the various dates listed above."

Additionally, several cases which have reviewed this issue support the premise that the ability to legally function as a corporation determines corporate existence for federal income tax purposes. See Allied Utilities Corporation, 64 T.C. 1024 (1975); Braswell Motor Freight Lines, Inc. v. United States, 72-2 USTC ¶ 9675 (N.D. Tex. 1972), aff'd per curiam 477 F.2d 594 (5th Cir. 1973) cert. denied 414 U.S. 1143 (1974). Based on [REDACTED]'s representation, the [REDACTED] corporations at issue were organized in [REDACTED] and had the ability to legally function as corporations. Thus, the requirements for receiving a determination from the District Director pursuant to Treas. Reg. § 6012-2(a)(2) have not been met.

CONCLUSION

The [REDACTED] corporations do not satisfy the Treas. Reg. § 1.6012(a)(2) requiring a representation that the corporation(s) "has never perfected its organization". Thus, the District Director cannot make a determination those corporations are not required to file federal income tax returns for [REDACTED]. We recommend the District Director deny [REDACTED]'s determination request by indicating it failed to comply with the requirements of Treas. Reg. § 1.6012-2(a)(2).

Should you have any questions concerning this matter, please contact the undersigned attorney at (313) 226-2305; ext. 245.

PHOEBE L. NEARING
District Counsel

By: Eric R. Skinner
ERIC R. SKINNER
Attorney